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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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12 GREGORY MCKENNA,

Case No.: CV 09 5706 PVT

13 Plaintiff,

**DEFENDANT AVAYA INC.'S
OBJECTIONS TO EVIDENCE
SUBMITTED BY PLAINTIFF GREGORY
MCKENNA IN SUPPORT OF MOTION
FOR PARTIAL SUMMARY JUDGMENT**

14 vs.

15 AVAYA, INC.,

16 Defendant.

Date: February 23, 2010

Time: 10:00 a.m.

Courtroom 5, 4th Floor

Hon. Patricia V. Trumbull

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Complaint Filed: September 24, 2009

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Defendant Avaya Inc. ("Avaya") objects to the following evidence provided by Plaintiff Gregory McKenna in support of his motion for partial summary judgment.

A. Objections to Declaration of Gregory McKenna

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<p>2 2. McKenna Dec., Page 1, lines 19-20 3 and Exhibit 1: "Attached hereto as 4 Exhibit 1 is a true and correct copy 5 of an email that Charlie Ill 6 forwarded to me on September 29, 7 2008."</p>	<p>Lack of authentication. (F.R.E. 901(a); F.R.C.P. 56(e); see <i>Orr</i>, 285 F.3d at 773-774.) Hearsay, on multiple levels, if offered to prove the truth of the matter stated. (F.R.E. 801(c), 802.) Lacks showing that declarant has personal knowledge and is competent to testify on the matters stated. (F.R.E. 602; F.R.C.P. 56(e)(1).) Lacks relevance. (F.R.E. 402.)</p>
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B. Objections to Declaration of James P. Keenley

<p>10 3. Declaration of James P. Keenley 11 ("Keenley Dec."), in its entirety.</p>	<p>Lacks showing that declarant has personal knowledge and is competent to testify on the matters stated. (F.R.E. 602; F.R.C.P. 56(e)(1).)</p>
<p>12 4. Keenley Dec., page 1, lines 19-21 13 and Exh. 1: "Attached hereto as 14 Exhibit 1 is a true and correct copy 15 of the Plan Document and 16 Summary Plan Description of the 17 Avaya U.S. Force Management 18 Program in effect as of August 20, 19 2008.</p>	<p>Lack of authentication. (F.R.E. 901(a); F.R.C.P. 56(e); see <i>Orr</i>, 285 F.3d at 773-774.) Lacks foundation as to personal knowledge of meaning and source of documents. (F.R.C.P. 56(e); F.R.E. 602.) Hearsay, if offered to prove the truth of the matter stated. (F.R.E. 801(c), 802.)</p>

DATED: February 2, 2010

FISHER & PHILLIPS LLP

By: _____ /s/
Jennifer K. Achtert
Attorneys for Defendant
AVAYA INC.